

### **REMARKS / ARGUMENTS**

The enclosed is responsive to the Examiner's Final Office Action mailed on 7/27/2007 and is being filed pursuant to a Request for Continued Examination (RCE) as provided under 37 CFR 1.114. At the time the Examiner mailed the Action claims 1-14, 16-19, 21-27 and 46-59 were pending. By way of the present response the Applicant has amended claims 1, 13, 14, 16, 46, 58 and 59 and respectfully requests the allowance of all claims.

The Examiner has rejected all independent claims under 35 USC 112 for failing to meet the written description requirement and for indefiniteness. See, Examiner's Office Action Response, pp. 3-4. The Examiner has also maintained a rejection in which the Bodin reference is deemed to anticipate the Applicant's claims. The Applicant understands the Examiner's concerns and believes the chart provided below is sufficient to demonstrate the patentability of the present application in view of the amendments submitted herewith.

	<b>Prior Art Bodin Reference</b>	<b>Embodiment of Applicant's Invention</b>
<b>Client Side Application Layer</b>	Comprehends requested data amount is broken down into smaller portions and issues separate requests for each portion.	Simply issues a request for the whole amount

<b>Client Side Transport Layer</b>	<p>*TCP</p> <p>* independent construct/session for each smaller portion - no understanding or tracking of the total amount of requested data.</p> <p>* no requesting of retransmission for missing responses (retransmissions performed by the server).</p>	<p>* comprehends whole requested amount is broken down into smaller pieces, tracks what portions have been received and what portions have not been received.</p> <p>* requesting of retransmission for missing responses.</p>
<b>Client Side Networking Layer</b>	Networking layer function(s)	Networking layer function(s)

The rows of the above chart indicate the different levels in the OSI scheme discussed in the Applicant's previous response filed on April 30, 2007. The first column maps the teachings of the Bodin reference against these layers. The second column maps a possible embodiment covered by the Applicant's current claims.

With respect to the Bodin reference (first column), the Applicant stated the following in the 4/30/07 response

[T]he problem of Bodin is that the underlying [TCP] transport layer "fails" when asked to transport an extremely large data file. The solution of Bodin is, at the application layer, to break-up the data file into smaller pieces which are subsequently passed to the underlying transport layer. As a consequence, Bodin teaches an application layer protocol that includes the identification of a portion size and portion number.

See, Applicant's Office Action response, p. 16. (emphasis original).

This is depicted visually in the chart above. That is, column 1 depicts the application layer as comprehending that the requested amount of data is broken down in

smaller pieces and therefore issues separate requests for each piece. This is a workable solution with an underlying TCP transport layer.

The underlying TCP transport layer, which is well known, simply instantiates separate constructs or sessions for each request handed down from the application layer. The TCP transport layer, having been given separate requests, has no understanding of the larger, whole of requested data and therefore is incapable of tracking what portions of the larger whole have been received and what portions have not been received. Moreover, again consistent with the well known TCP standard, retransmission of "lost" portions are managed at the server not the client (i.e., the server recognizes a portion has been lost through failure to received an acknowledgement from the client).

The Applicant's claimed invention stands apart from the Bodin reference in a number of ways. A significant emphasis of the present application is the shifting of transport layer responsibilities from the server (as in the prior art) to the client. Therefore the Applicant's specification is replete with discussion as to how the client - not the server - controls the communication flow between the two. Claims 1 and 46 of the present application, for instance, recite the following as presently amended(emphasis added):

performing the following at a **client transport layer**:  
receiving a request for an action to be performed by a server to a data object, said data object being maintained by said server, said server to generate a response for said client as a consequence of performing said action;  
creating a request message, said request message to be transported from said client to said server over a network, said response being divide-able into a plurality of smaller response portions, wherein said request message comprises a request for

a first response portion of said plurality of smaller response portions and wherein said request message further comprises:

1) a description of said action;

2) a description of said data object;

3) a first limit that defines the maximum size of said first response portion;

maintaining at said client an understanding of how much of said first response portion has been sent by said server and received from said network by said client;

issuing another request message for transport from said client to said server for another response portion of said plurality of smaller response portions that has not been requested from said server by said client in response to said request;

determining said another portion has not been timely received; and,

reissuing a second request message requesting said another portion, said second request message for transport from said client to said server.

Simply put, and consistent with the chart provided above, an embodiment that would be covered by the above claim includes a client transport layer that:

1) breaks down a request for an amount of data into requests for smaller portions of that data and maintains an understanding of what portions have been received from the server; and,

2) performs the retransmission aspect of flow control.

The claim elements directed to 1) above include the "creating" and "maintaining" elements. The claim elements directed to 2) above include the "determining" and "reissuing" elements.

The Applicant respectfully submits that the Bodin reference simply falls short of disclosing all the client-side transport layer functionality claimed by the Applicant. Even if Bodin's application layer breakdown of requested data into smaller requested portions is viewed as a transport layer function (because it is aimed at affecting transportation rather than performing a true application) and therefore might disclose

embodiment feature 1) above, it simply fails to disclose any retransmission control being performed at the client side. That is, embodiment feature 2) above or anything like it is simply not disclosed by Bodin.

The Applicant also directs the Examiner's attention to issued U.S. Pat. No. 7,158,479 B1 (included herewith under an IDS) so that the Examiner may consider the issue of double-patenting with respect to the instant case and the '479 patent. The Applicant believes the claims of the present application are patentably distinct from the claims of the '479 patent, but in the interests of full disclosure hereby invites the Examiner to consider the issue. The Examiner is also invited to consider any Office Actions issued in the application that became the '479 patent.

Thus, in view of these comments, the Applicant respectfully submits the claims as presented are now allowable and respectfully requests the allowance of same.

## **CONCLUSION**

Because the Applicant has demonstrated the patentability of all pending independent claims, the Applicant respectfully submits that all pending claims are allowable. The Applicant's silence with respect to the dependent claims should not be construed as an admission by the Applicant that the Applicant is complicit with the Examiner's rejection of these claims. Because the Applicant has demonstrated the patentability of the independent claims, the Applicant need not substantively address the theories of rejection applied to the dependent claims.

In the further interests of efficiency, the Applicant reserves the right under MPEP 2144.03.C to cause the Examiner to find in the prior art subject matter to which the Examiner has taken Official Notice at a later time in the prosecution of the present case when the subject matter of such prior art is actually at issue.


For the reasons provided above, applicant respectfully submits that the current set of claims are allowable. If the Examiner believes an additional telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Robert B. O'Rourke at (408) 720-8300.

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Date: 11/1/07

  
\_\_\_\_\_  
Robert B. O'Rourke  
Reg. No. 46,972

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, CA 90025-1030  
(408) 720-8300